No. ——

IN THE
Supreme Court of the United States
OCTOBER TERM, 1998

JEREMIAH W. (JAY) NIXON, Attorney General of Missouri; RICHARD ADAMS, PATRICIA FLOOD, ROBERT GARDNER, DONALD GANN, MICHAEL GREENWELL and ELAINE SPIELBUSCH, members of the Missouri Ethics Commission; and ROBERT P. MCCULLOCH, St. Louis County Prosecuting Attorney;

Petitioners,

v.

SHRINK MISSOURI GOVERNMENT PAC and ZEV DAVID FREDMAN,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the court of appeals erred in declaring that Missouri's campaign contribution limits for statewide office, which exceed the limits expressly approved by this Court for national elections in *Buckley* v. *Valeo*, 424 U.S. 1 (1976), violates the First Amendment.

PARTIES TO THE PROCEEDING

All of the parties to this proceeding are listed in the caption except for Joan Bray, a member of the Missouri House of Representatives who intervened as a defendant below. Pursuant to Fed. R. App. P. 43(c)(1), Donald Gann and Michael Greenwell, newly appointed members of the Missouri Ethics Commission, are substituted for their predecessors, Ervin Harder and John Howald.

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IN THE

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No. ———

JEREMIAH W. (JAY) NIXON, Attorney General of Missouri; RICHARD ADAMS, PATRICIA FLOOD, ROBERT GARDNER, DONALD GANN, MICHAEL GREENWELL and ELAINE SPIELBUSCH, members of the Missouri Ethics Commission; and ROBERT P. MCCULLOCH, St. Louis County Prosecuting Attorney;

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PETITION FOR WRIT OF CERTIORARI

Petitioners Jeremiah W. (Jay) Nixon, Richard Adams, Patricia Flood, Robert Gardner, Donald Gann, Michael Greenwell, Elaine Spielbusch, and Robert McCulloch respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (Appendix ("App.") 1a-19a), entered on November 30, 1998, has not yet

been reported. The court of appeals' order entering an injunction pending appeal (App. 20a-23a) is reported at 151 F.3d 763 (8th Cir. 1998). The opinion of the district court (App. 24a-41a) is reported at 5 F.Supp. 2d 734 (E.D.Mo. 1998).

JURISDICTION

The court of appeals entered its judgment on November 30, 1998. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution of the United States, Amendment I:

> Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Mo. Rev. Stat. § *130.032* (1984) (footnote omitted) provides in pertinent part:

> 1. . . . [T]he amount of contributions made by or accepted from any person in any one election shall not exceed the following:
>
> (1) To elect an individual to the office of governor, lieutenant governor, secretary of state, state treasurer, state auditor or attorney general, one thousand dollars;
>
> (2) To elect an individual to the office of state senator, five hundred dollars;
>
> (3) To elect an individual to the office of state representative, two hundred fifty dollars;
>
> (4) To elect an individual to any other office, . . . if the population of the electoral district, ward, or other unit according to the latest decennial census is under one hundred thousand, two hundred fifty dollars;

> (5) To elect an individual to any other office, . . . if the population of the electoral district, ward, or other unit according to the latest decennial census is at least one hundred thousand but less than two hundred fifty thousand, five hundred dollars; and
>
> (6) To elect an individual to any other office, . . . if the population of the electoral district, ward, or other unit according to the latest decennial census is at least two hundred fifty thousand, one thousand dollars.
>
> 2. For purposes of this subsection "base year amount" shall be the contribution limits prescribed in this section on January 1, 1995. Such limits shall be increased on the first day of January in each even-numbered year by multiplying the base year amount by the cumulative consumer price index, as defined in section 104.010, [Mo. Rev. Stat. 1994], and rounded to the nearest twenty-five-dollar amount, for all years since January 1, 1995.[1]
>
> 3. Candidate committees, . . . campaign committees and continuing committees, other than those continuing committees which are political party committees, shall be subject to the limits prescribed in subsection 1 of this section. The provisions of this subsection shall not limit the amount of contributions which may be accumulated by a candidate committee and used for expenditures to further the nomination or election of the candidate who controls such [] committee, except as provided in section 130.052.
>
> . . . .
>
> 7. Any committee which accepts or gives contributions other than those allowed shall be subject to a surcharge of one thousand dollars plus an amount equal to the contribution per nonallowable contribution, to be paid to the ethics commission and which shall be transferred to the director of revenue, upon

[1] For 1998, the amounts are $275, $525, and $1075.

notification of such nonallowable contribution by the ethics commission, and after the candidate has had ten business days . . . to return the contribution to the contributor. The candidate and [any other person] owing a surcharge shall be personally liable for the payment of the surcharge [and] . . . . [s]uch surcharge shall constitute a debt to the state enforceable under, but not limited to, the provisions of chapter 143, [Mo. Rev. Stat. 1994].

INTRODUCTION AND STATEMENT

The headlines in every major newspaper in the United States and the broadcasts every night on the evening news programs reveal unmistakably that there is a widespread perception in this Country of abuse and corruption in campaign financing. There is a real fear, which may be stronger today than at any time in recent memory, that money is harmfully distorting the nation's political process. Not surprisingly, in such an environment, there is strong political pressure on legislators at all levels of government to adopt restrictions that will eliminate or at least deter efforts to pollute the political process.

Of course, campaign reform cannot be implemented legislatively without regard to the Constitution. Political discourse is without question one of the most fundamental freedoms Americans enjoy and thus governmental efforts to regulate the campaign process necessarily must be mindful of the commands of the First Amendment. But, just as the nation gears up for what likely will be a watershed year in its attempts to adopt reforms that respond at least to the perception of a campaign system run amok, the court of appeals in this case has issued a First Amendment ruling that seriously complicates an already complex process of implementing meaningful change. Thus, instead of debating the merits of particular campaign contribution limits, legislators—particularly those in the Eighth Circuit—now either will refuse to act because of the constitutional impediments or will act at their peril with no assurance that any campaign limits they adopt

will withstand judicial scrutiny. This constitutional limbo is intolerable.

The holding of the Eighth Circuit also casts a serious cloud over the proper meaning of *Buckley* v. *Valeo*, 424 U.S. 1 (1976). Indeed, under the logic of the opinion below, even the federal contribution limit upheld in *Buckley* is no longer constitutional. Moreover, it is clear that the limits embodied in Missouri's legislation would be upheld today by the Sixth Circuit, *Kentucky Right to Life, Inc.* v. *Terry*, 108 F.3d 637, 648 (6th Cir.), *cert. denied*, 118 S. Ct. 162 (1997). In sum, it would be difficult to find an issue of greater national significance that both requires and warrants some measure of legal certainty at this pivotal point in time when the nation undertakes to decide how best to prevent further deterioration of the citizenry's perception of the unfairness of our current system of electing government officials.

1. Since at least 1907, legislatures have repeatedly tried to prevent government officials and candidates for office from accepting money from those with financial interests in official action. See *United States* v. *UAW-CIO*, 352 U.S. 567, 575 (1957). For many years, those efforts were limited to bribery laws and to laws restricting campaign contributions from corporations, labor unions, and government employees. See, *id.* at 575-87. The inadequacy of those efforts was dramatically demonstrated by the serious abuses that occurred during the 1972 presidential election. Congress and many state legislatures reacted by enacting broader reforms, such as federal disclosure requirements and contribution limits. Most prominent among them was the Federal Election Campaign Act ("FECA").

A principal FECA reform was to limit contributions by individuals to candidates for all federal offices to $1000 per election per contributor.[2] In 1976, that limit

[2] 2 U.S.C. § 441a(a)(1)(A). The statute permits $20,000 contributions to political party committees (§ 441a(a)(1)(B)), $5,000 contributions to other qualified political committees (§ 441a(a)(1)

was upheld in *Buckley* v. *Valeo*. 424 U.S. at 28. Thirty-five states and many cities have since adopted contribution limits—some below, some above, but most near the FECA limits affirmed in *Buckley*. These provisions are outlined in the appendix to the petition. App. 42a-44a, *infra*. To be sure, limits that are substantially below $1000 have been held to be unconstitutional,[3] but this is the first reported case rejecting limits at the FECA level, as violative of the First Amendment.

Missouri adopted contribution limits in 1994.[4] As adjusted for inflation since 1994, the statute now prohibits candidates for public office from accepting contributions over $275, $525, or $1075, depending on the size of the constituency. Constituency size correlates with the amount that candidates need to amass in order effectively to campaign It also correlates with the amount that an individual can give before his or her contribution constitutes such a large portion of a campaign treasury that the contribution merits special attention from the candidate. Most pertinent here was the $1075 limit that, until the court of appeals entered its injunction, prevented respondent Shrink Missouri Government PAC from making large contributions to respondent Fredman, a candidate for state auditor.

(C)), and $17,500 contributions by major party senatorial campaign committees to candidates for the U.S. Senate (§ 441a(h)). Only the $1000 limit is used for comparison here because the respondent Shrink Missouri Government PAC would not qualify as a political committee under § 441a(a)(4).

3 *E.g.*, *Carver* v. *Nixon*, 72 F.3d 633, 645 (8th Cir.), *cert. denied* 518 U.S. 1033 (1996); *Russell* v. *Burris*, 146 F.3d 563, 568 (8th Cir. 1998), *cert. denied* 67 USLW 3177 (Nov. 16, 1998); *National Black Police Ass'n* v. *District of Columbia Bd. of Elections*, 924 F. Supp. 270, 272 (D.D.C. 1996), *vacated as moot*, 108 F.3d 346 (D.C. Cir. 1997).

4 Actually, Missouri enacted two statutes. The legislature's version is at issue here. A much lower set of limits, placed on the ballot by initiative and passed by referendum as "Proposition A," was previously held to be unconstitutional. *Carver* v. *Nixon*, 73 F.3d at 645.

For years after enactment of Missouri's law in 1994, there was no dispute that Missouri's $1075 was the maximum any Missouri candidate could accept. In fact, the Eighth Circuit had announced that it "generally accept[ed] the limits established by the legislature." *Carver*, 72 F.3d at 641. Thus, all candidates in the 1996 elections for governor, lieutenant governor, secretary of state, treasurer, attorney general, and the legislature were forced to comply with the limits. And until the court of appeals acted in this case, candidates in the 1998 election for state auditor had to conform to the limits that now have been stricken by the court below.

2. The filing of this suit last February was the candidates' first notice of a dispute over the State's ability to mirror the FECA limits. But even the news of the initiation of this litigation left little reason to question whether the rules would change. The district court denied first a temporary restraining order, then a preliminary injunction, and finally a permanent injunction. App. 25a-26a, 41a, *infra*. Candidates were left with the understanding that they, like the candidates in 1996, would continue to raise money and operate campaigns under the modest constraints of the 1994 statute. That understanding disappeared just twelve days before the August 4 primary elections, when the court of appeals entered its injunction pending appeal. The rules changed dramatically; candidates could again accept contributions of literally any size.[5]

Petitioners immediately sought rehearing *en banc*. When the court of appeals did not rule in a timely fashion, petitioners unsuccessfully sought a stay from the Circuit Jus-

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5 That distinguishes this case from its predecessors identified in note 3, *supra*. In each of those cases, elimination of the particular limits at issue simply reinstated a set of limits closer to the FECA model. Now Missouri has no contribution limits in place and no assurance that some larger limit will withstand the constitutional scrutiny applied by the court of appeals in this cae. See pp. 13-15, *infra*. (Compelling state interest test and lease restrictive means analysis pose virtually insuperable burdens on state).

tice. The court of appeals *en banc* denied the motion for rehearing on August 20 and the case was argued on August 21. On November 30, 1998, the Eighth Circuit became the first court to hold unconstitutional a contribution limit that is higher than the one affirmed in *Buckley*, a limit wich remains in effect to this day for all federal elections.

3. In reaching its conclusion, the panel majority acknowledged that its holding conflicts with the decision of the Sixth Circuit in *Kentucky Right to Life, Inc.*, which upheld a $1000 limit. In defense of its holding, the panel first concluded that Missouri's contribution limit is subject to the compelling state interest standard of judicial scrutiny. While the court was willing to characterize Missouri's interest in eliminating the public's perception of corruption as "compelling," the panel was unwilling to accept the Missouri legislature's judgment that such a public perception actually exists that would justify placing a $1075 limit on contributions to statewide candidates. In addition, the panel held that the contribution limit could not withstand scrutiny under the "least restrictive means" test. Although the panel recognized that *Buckley*'s approval of a $1000 limit should be "something of a benchmark," the court below nevertheless rejected Missouri's $1075 limit as "heavy-handed" in light of inflation over the past 25 years. App. 8a, *infra.*

Judge Ross concurred separately. He rejected the idea that a $1075 limit is different in kind from the $1000 limit approved in *Buckley*, but otherwise joined in finding Missouri's statute unconstitutional. App. 9a-10a, *infra.*

Judge Gibson dissented. He argued that the evidence of a compelling interest in *Buckley* was no different from the proof in this case and that the limitation here is not "different in kind" from the limitation approved in *Buckley*. The dissent then identified the square conflict between the Sixth Circuit's fidelity to *Buckley* and the majority's unwillingness to be "bound by *Buckley* unless and until the Supreme Court declares otherwise." App. 19a, *infra.*

REASONS FOR GRANTING THE PETITION

Taking widely divergent paths in applying precedents from this Court, courts of appeals have reached conflicting decisions as to both where the floor on contribution limits is and the proper method of constitutional analysis to be applied. Left unresolved, those conflicts will lead to confusion, increase the public cynicism about the integrity of elections throughout the United States, and inhibit the ability of legislatures effectively to reform campaign laws.

I. THE EIGHTH CIRCUIT'S DECISION REJECTING A $1075 LIMIT CONFLICTS WITH THE SIXTH CIRCUIT'S DECISION UPHOLDING A $1000 LIMIT AND WARRANTS REVIEW BY THIS COURT.

This Court has addressed limits on contributions to candidates for office only once, in *Buckley* v. *Valeo.* At issue, *inter alia*, was FECA's provision limiting to $1000 contributions made by individuals to candidates. FECA lumped together federal elections ranging from that for delegate from American Samoa (1972 population: 28,202) to the presidency of the United States (1972 population: over 203 million). The $1000 barrier upheld by this Court still applies to all candidates for federal office.

The Eighth Circuit has become the first court to strike down as unconstitutional a statute that exceeds the $1000 limit blessed by the Court in *Buckley*. Petitioners believe, as did the dissent below, that the majority's decision conflicts with the ultimate holding in *Buckley*. But more important at this moment is that the decision below creates an irreconcilable and acknowledged inter-circuit conflict between the Eighth Circuit's rejection of a $1075 limit and the declaration of the Sixth Circuit that a $1000 limit is constitutional. *Kentucky Right to Life, Inc.*, 108 F.3d at 648.

This conflict among the courts of appeals arising out of the doctrinal bases of *Buckley* is more than a matter of

academic interest. The integrity of the election process is dependent on clear, consistent, and understandable rules—rules that do not change at some critical point in a campaign cycle. The integrity of an election process itself is threatened by the conflicting results in the Eighth and Sixth Circuits—especially because those conflicts may be exploited for political advantage by carefully timing the filing of constitutional challenges to contribution limits in other states. Even federal elections may be threatened. The inflation-based rationale that animated the Eighth Circuit's decisions here and in prior cases clearly opens the door to a challenge to the FECA despite *Buckley*, and the Eighth Circuit's insistence on proof beyond that found in *Buckley* could lead at least that court to reject the FECA limits, most likely once the 2000 presidential and congressional campaigns are well under way.

It is thus vital that the Court consider the issue now rather than allow the problem to fester and potentially surface in the middle of the next election cycle. Candidates need to know what the rules are and to know that those rules will not be altered in the middle of the campaign. A decision on campaign contributions at this time by this Court is the only way to ensure that the 1999 and 2000 elections are conducted according to fair and consistent rules. Accordingly, the Court should grant the petition so that it can resolve the issue this Term.

II. THE EIGHTH CIRCUIT HAS CREATED A CONFLICT AMONG THE CIRCUITS IN DEFINING THE LEVEL OF SCRUTINY GIVEN TO LIMITS ON CONTRIBUTIONS MADE TO CANDIDATES.

Not only is there a square conflict as to the validity of a campaign contribution limit, but also there is a subsidiary conflict among the circuits concerning the proper level of judicial scrutiny to apply to restrictions on the permissible amount of a campaign contribution. Thus, although the Ninth Circuit has not been faced with a contribution limit comparable to the one here, nevertheless, it has announced and applied a starting point—intermediate scrutiny—that is critically different from the compelling interest standard chosen by the Eighth Circuit. The Sixth Circuit has adopted the same approach as the Ninth.

Of course, all the courts have cited *Buckley* when addressing the level of scrutiny to be applied in considering challenges to contribution limits. There this Court spoke of a "rigorous standard of review" and examined the government's "weighty interests." 424 U.S. at 29. But this Court characterized contribution limits as imposing "only a marginal restriction upon the contributor's ability to engage in free communication." 424 U.S. at 20-21. That is not the language of "strict scrutiny." Language does appear later in *Buckley*, as the Court turned its attention to candidate expenditure limits, that seems plainly to embrace strict scrutiny. But the contrast in analysis between the two issues casts serious doubt that this Court meant to apply a compelling state interest standard to campaign contribution limits.

Later decisions by this Court reveal that the differences in language in the different parts of *Buckley* were the product of analytical differences and not happenstance. In *California Medical Ass'n* v. *FEC*, 453 U.S. 182 (1981), speaking for the plurality, Justice Marshall pointed out that the Court had applied different standards to contribution limits than it had applied to expenditure limits. He said that " 'speech by proxy' . . . is not the sort of political advocacy that this Court in *Buckley* found entitled to full First Amendment protection." 453 U.S. at 196 (plurality). The act of contributing to candidates is an "attenuated form of speech [that] does not resemble the direct political advocacy to which this court in *Buckley* accorded substantial constitutional protection." *Id.* at 196 n.16. In the view of the *California Medical Ass'n* plurality, there was a measurable difference between the "strict" or "exacting" scrutiny that is to be applied to limits affecting independent expenditures and the level of

scrutiny that is to be applied to limits on contributions to candidates. Only one member of the Court disagreed; the dissent relied solely upon jurisdictional grounds. See *id.* at 201-04 (Blackmun, J., concurring), 204-09 (Stewart, J., dissenting).

The Ninth Circuit has adopted the view of the *California Medical Ass'n* plurality as to the correct reading of *Buckley*; and the Eighth Circuit has rejected it. Thus in deciding cases challenging contribution limits these courts have held:

> Ninth: "[W]hile contribution limitations are reviewed under a 'rigorous' level of scrutiny, they are not reviewed under strict scrutiny." *VanNatta* v. *Keisling*, 151 F.3d 1215, 1220 (9th Cir. 1998).
>
> Eighth: "Thus, we apply strict scrutiny." *Carver*, 73 F.3d at 638, cited and applied by the court of appeals in this case at App. 5a [slip op. at 5].

This conflict is significant, for "[o]nly rarely are statutes sustained in the face of strict scrutiny." *Bernal* v. *Fainter*, 467 U.S. 216, 220 n.6 (1984). Nothing in the Eighth Circuit's decisions suggests that any effective or reasonable contribution limit, whether adopted by the states, by cities, or by Congress, could survive the strictest level of judicial review. So far, in considering campaign finance reform, the Eighth Circuit has proven the wisdom of Justice Marshall's observation that "scrutiny that is strict in theory [is] fatal in fact." *Fullilove* v. *Kluiznick*, 448 U.S. 448, 519 (1980) (Marshall, J., concurring).

The Sixth Circuit has adopted the same reading of *California Med. Ass'n* as the Ninth, and this is also in conflict with its neighbor, the Eighth Circuit. In *Kentucky Right to Life, Inc.*, the Sixth Circuit relied upon *Buckley* and *California Med. Ass'n* for the proposition that a contribution limit "does not receive the full First Amendment protection." 108 F.3d at 649. Thus, when it concluded that a $1000 limit is constitutional, the Sixth Circuit clearly did not follow the strict scrutiny path that

the Eighth Circuit derived from *Buckley* and the First Amendment. See 108 F.2d at 648.

Absent a decision by this Court, one by one the other federal circuits will choose between the level of judicial review adopted by the Eighth Circuit or the one applied by the Sixth and the Ninth. But, already campaign finance reforms in Kentucky and Tennessee are subject to different levels of judicial review than reforms just the other side of the Mississippi River, in Missouri and Arkansas. That difference on a matter that fundamentally affects the political landscape in each State should not be countenanced by this Court.

III. THE METHOD IN WHICH THE EIGHTH CIRCUIT APPLIES THE COMPELLING STATE INTEREST STANDARD CONFLICTS WITH BOTH *BUCKLEY* AND THE SIXTH CIRCUIT AND IMPOSES AN IMPOSSIBLE BURDEN ON GOVERNMENTS SEEKING TO ENACT REASONABLE LIMITS ON CAMPAIGN CONTRIBUTIONS.

The effect of adopting a "compelling interest" standard for judging the constitutionality of campaign contributions is that it imposes upon the States two extraordinary burdens in order to enact permissible limits on such contributions. The method chosen by the Eighth Circuit to apply those burdens transforms them from extraordinary to impossible.

First, the Eighth Circuit's analysis of the State legislature's fact-finding concerning the magnitude of its interest in adopting contribution limits is utterly nondeferential. Thus, in stark contrast to this Court's analysis of the legislative record in *Buckley*, which was based on razor-thin evidence and where the Court was willing to accept largely on faith Congress's assessment of the existence of a compelling problem arising out of large contributions during political campaigns, the Eighth Circuit approached the same issue with marked skepticism. Thus, in *Buckley* the Court was deferential to the legislative judgment and

refused to insist that Congress "fine tune" the limits on contributions. 424 U.S. at 30. In the Eighth Circuit, the majority demanded that Missouri "must prove that [it] has a real problem with corruption or a perception thereof as a direct result of large campaign contributions." App. 6a, *infra*.

The majority was unwilling to accept the State's proof, which included an affidavit from the co-chair of the Committee on Campaign Finance Reform that the legislature "believed that contributions over [the statutorily prescribed maximums] create both the appearance that contributors could purchase the votes of elected officials and the danger of actual vote-buying." App. 15a, *infra* (Gibson, J., dissenting). As Judge Gibson concluded: "The Court's rejection of . . . Senate Bill 650's legislative underpinnings is plainly at odds with *Buckley*." *Id.*

The court of appeals' insistence upon clear proof of a social problem is troublesome because it demonstrates the great height of the first practical hurdle that arises out of a compelling state interest test. But at least a legislature can theoretically overcome this obstacle by making some kind of findings regarding the precise nature of the problems arising out of campaign financing.[6] By contrast, the

[6] The use of the adjective "theoretical" is vital here. Ever since the Eighth Circuit started down this path in *Carver* v. *Nixon*, states have tried to find evidence that would be sufficient to meet the court's standard. But no matter what evidence the states have presented, the Eighth Circuit has concluded that they failed. Today, there is no reason to believe that the Eighth Circuit could be satisfied, because that court has not identified any type of evidence that would satisfy its standards. As the dissenting judge correctly observed, even the evidence in *Buckley* would not be enough under this new standard. App. 10a [slip op. at 10] (the FECA limits were affirmed in *Buckley* "[u]pon a record more slender than the one before us"). As a result, cities and states in the Eighth Circuit that have contribution limits are required to prove what may be impossible to show, while states and cities outside the circuit are free to rely on the conclusions and type of proof found adequate in *Buckley*.

majority's aggressive application of the second part of the test, the least restrictive means or narrowly tailoring analysis, all but guarantees that no state legislature could enact a contribution limit that can withstand judicial scrutiny in the Eighth Circuit.

Taken to its logical extreme, Missouri must prove "objectively" (App. 7a) that a reasonable contributor could actually buy undue influence for $1076, or would be perceived as having purchased such influence for $1076, if the State wished to adopt a $1075 limit. This, of course, is flatly inconsistent with this Court's observation in *Buckley* that the extent of the problem of actual or perceived corruption "can never be reliably ascertained." 424 U.S. at 27. It is also fundamentally inconsistent with the Sixth Circuit's reasoning, based on *Buckley*, that "the judiciary should not take out a scalpel to probe dollar limitations." *Kentucky Right to Life, Inc.*, 108 F.3d at 648. Thus, the Sixth Circuit plainly would not embrace the exacting approach adopted below that would force legislatures to demonstrate why a one dollar difference makes all the constitutional difference in the world.

Indeed, unless this Court were to adopt the view that no limits are permissible on campaign contributions, which would be a radical expansion of the First Amendment and a devastating blow to government efforts to clean up the campaign process, then it is difficult to imagine a law for which strict scrutiny seems less well suited. Under strict scrutiny the presumption of constitutionality is reversed and thus it will be the government's burden to prove that whatever limit it imposes is the least restrictive means of achieving its overall result of eliminating the perception of corruption. The burden of proving that raising a limit one, ten, or even a hundred dollars will eliminate or even significantly dilute its prophylactic impact is impossible to sustain. Thus, there can be no serious doubt that the strict scrutiny standard will be "fatal in fact" to all contribution limits.

IV. THE EIGHTH CIRCUIT'S DECISION INVOLVES MATTERS OF OVERRIDING NATIONAL IMPORTANCE THAT WARRANT REVIEW NOW TO AVOID MID-CAMPAIGN CONSTITUTIONAL CHALLENGES IN FUTURE ELECTIONS AND TO AVOID DISTORTING THE CURRENT NATIONAL DEBATE ON CAMPAIGN REFORM.

This case would merit consideration by this Court even if the Eighth Circuit were the only court to have considered the questions in this case. The rules adopted by the court below threaten to increase, not decrease, the public's skepticism about the integrity of the election process.

Thus, the circumstances of this case, by themselves, reveal how important it is for the Court to provide guidance on the correct legal standards now rather than wait until the next election cycle begins. Dozens of states and scores of local jurisdictions (App. 42a-44a, *infra*) have adopted statutory limits on campaign contributions. All of those limitations are now subject to serious constitutional challenge under the Eighth Circuit's rationale. It is certainly true that such a challenge will not succeed in Kentucky, Ohio, Michigan and Tennessee (at least in federal court), but everywhere else it is impossible to predict what the outcome of litigation will be. What is worse is that the litigation can itself become a tactical weapon in the candidates' arsenal during a campaign. Thus, the possibility of a successful judicial challenge to limits on contributions in the middle of a heated political struggle heightens the need to have these issues resolved now rather than during a campaign. No one can seriously doubt that elections should be decided on grounds other than successful litigation strategies.

The significance of this case, however, is not limited to the threat of lawsuits disrupting future elections. It also inhibits congressional and legislative efforts to further reform the campaign finance system. Congress and legislatures do not know what standards they must meet

in their ongoing efforts to address problems such as the "soft money" contributions that the media have tied so closely to the perception of public corruption after the 1996 presidential campaign. Congress and legislatures do not know whether they can rely on the type of record made in adopting the FECA, or instead must meet some undefined new level of proof.

Legislators at all levels will recognize that the conflicts among the circuits and the doubts now cast over the meaning of *Buckley* erect an effective barrier to their efforts to regulate campaign activities to protect the integrity of elections by eliminating actual and perceived sources of corruption. Only intervention by this Court at this time can ensure that the nation's pending debate about the future of campaign regulation will be based on the merits of reform and not on which constitutional rules will apply to whichever reforms legislators ultimately would conclude best serve the public interest.

CONCLUSION

For the reasons stated above, this Court should grant the petition for writ of certiorari.

Respectfully submitted,

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APPENDICES

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 98-2351

SHRINK MISSOURI GOVERNMENT PAC,
a political action committee;
ZEV DAVID FREDMAN,
Appellants,

v.

RICHARD ADAMS, in his official capacity as a Member of the Missouri Ethics Commission; PATRICIA FLOOD, in her official capacity as a Member of the Missouri Ethics Commission; ROBERT GARDNER, in his official capacity as a Member of the Missouri Ethics Commission; ERWIN HARDER, in his official capacity as a Member of the Missouri Ethics Commission; JOHN HOWALD, in his official capacity as Chairman of the Missouri Ethics Commission; ELAINE SPIELBUSCH, in her official capacity as a Member of the Missouri Ethics Commission; JEREMIAH W. NIXON, in his official capacity as Missouri Attorney General; ROBERT P. MCCULLOUGH, in his official capacity as St. Louis County Prosecuting Attorney.
Appellees,

JOAN BRAY,
Intervenor on Appeal,

COMMON CAUSE,
Amicus Curiae.

Appeal from the United States District Court
for the Eastern District of Missouri

Submitted: August 21, 1998
Filed: November 30, 1998

Before BOWMAN, Chief Judge, ROSS and JOHN R. GIBSON, Circuit Judges.

BOWMAN, Chief Judge.

Shrink Missouri Government PAC and Zev David Fredman (collectively, SMG) appeal from the decision of the District Court granting summary judgment to members of the Missouri Ethics Commission, Missouri Attorney General Jay Nixon, and St. Louis County Prosecuting Attorney Robert P. McCullough [1] (collectively, the State) on SMG's challenge to certain provisions of Missouri's campaign finance law. We reverse and remand.

I.

In July 1994, the Missouri legislature, by enacting Senate Bill 650 (SB650), adopted certain amendments to the state campaign finance law that, among other things, restrict the amount of campaign contributions that persons can make to candidates for public office. The limits were to become effective on January 1, 1995. In November 1994, the electorate approved Proposition A, a ballot initiative that imposed even more restrictive contribution limits than those contained in SB650. Proposition A became effective immediately upon voter approval. In December 1995, this Court held that the Proposition A limits on campaign contributions violated the First Amendment. *See Carver v. Nixon*, 72 F.3d 633 (8th Cir. 1995),

[1] Although counsel for the prosecuting attorney spells the name of his client differently, we use the spelling as it appeared in the original complaint and as it still appears in the caption of this case.

cert. denied, 518 U.S. 1033 (1996).[2] At that time, the limits of SB650 became effective.

Under the provisions of SB650 challenged here, "the amount of contributions made by or accepted from any person other than the candidate in any one election shall not exceed" $1,075 to candidates for governor, lieutenant governor, secretary of state, state treasurer, state auditor, or attorney general, or for any office where the population of the electoral district is 250,000 or more; $525 to candidates for state senator, or for any office where the population of the electoral district is 100,000 or more; and $275 to candidates for state representative, or for any office where the population of the electoral district is less than 100.000. Mo. Rev. Stat. § 130.032.1 (Supp. 1997) (as amended early in 1998 by the Missouri Ethics Commission to account for inflation, *see* Mo. Rev. Stat. § 130.032.2 (Supp. 1997)).

SMG, a political action committee organized and doing business in Missouri, and Fredman, a resident of and registered voter in Missouri and an unsuccessful candidate for the Republican party's nomination for state auditor this election cycle, filed suit claiming that the limits violate their First Amendment rights of free speech and association. The parties filed cross motions for summary judgment; the District Court denied SMG's motions for summary judgment and for injunctive relief, and granted the State's summary judgment motion. SMG filed a notice of appeal, and on July 27, 1998, we granted SMG's motion for an injunction against enforcement of the campaign contribution limits of SB650 pending appeal.

[2] We did say in *Carver* that "we generally accept the limits established by the legislature." 72 F.3d at 641. But even if that comment could be construed to mean that the Court believed the SB650 limits to be constitutional (an excessively broad reading, we think), it is *obiter dictum* and is not binding on the Court in this case.

II.

We first address a question initially presented in the last few pages of the State's brief. The State claims that SMG and Fredman lack standing to challenge these contribution limits. We take up the question as our first matter of business, because we lack jurisdiction to entertain the appeal if both SMG and Fredman are without standing.

The State asserts that the injuries alleged are "contrived," "conjectural," and "hypothetical." Brief of Appellees at 49, 50. We disagree. The State cannot make a persuasive argument that SMG and Fredman are not and have not been harmed by the limits imposed on campaign contributions by SB650. *See Shrink Mo. Gov't PAC v. Adams*, No. 98-2351, Order at 3-4 (8th Cir. July 27, 1998) (order granting motion for injunction pending appeal). The only question, as we see it, is whether Fredman continues to have standing despite his loss as a candidate for statewide office in the August primary election. We hold that he does, as the State declined at oral argument to assure the Court that no recourse would be taken against those who, like Fredman, accepted campaign contributions in excess of the SB650 limits after July 27, 1998 (the date we ordered an injunction pending appeal), should the summary judgment be affirmed.

We hold that SMG and Fredman have standing to continue their challenge to the provisions of SB650 here at issue.

III.

We proceed now to the merits, reviewing the decision to grant summary judgment de novo. The question before us is straightforward: do the SB650 limits on political campaign contributions violate SMG's and Fredman's First Amendment rights of free speech and association?

The State insists, as it did in *Carver*, that campaign contribution limits are subject only to intermediate scru-

tiny, not the "rigorous standard of review" employed by the Court in *Buckley v. Valeo*, 424 U.S. 1, 29 (1976) (per curiam). But as we noted in *Carver*, the Supreme Court "articulated and applied a strict scrutiny standard of review" to the federal contribution limits that were under challenge in *Buckley*, and "has not ruled that anything other than strict scrutiny applies in cases involving contribution limits. *Carver*, 72 F.3d at 637; *see also Citizens Against Rent Control/Coalition for Fair Housing v. City of Berkeley, Cal.*, 454 U.S. 290, 294 (1981) ("[R]egulation of First Amendment rights is always subject to exacting judicial review."); *Russell v. Burris*, 146 F.3d 563, 567 (8th Cir.), *cert. denied*, 67 U.S.L.W. 3332 (U.S. Nov. 16, 1998) (Nos. 98-397, 98-399). The State must demonstrate, therefore, that it has a compelling interest and that the contribution limits at issue are narrowly drawn to serve that interest. *See Buckley*, 424 U.S. at 25; *Russell*, 146 F.3d at 567; *Carver*, 72 F.3d at 638.

A.

The State contends that its compelling interest is in avoiding the corruption or the perception of corruption brought about when candidates for elective office accept large campaign contributions. The State further posits, citing *Buckley*, that corruption and the perception thereof are inherent in political campaigns where large contributions are made, and that it is unnecessary for the State to demonstrate that these are actual problems in Missouri's electoral system. Recent precedent from this Court is to the contrary. In both *Carver* and *Russell*, we were not satisfied with the mere contention that the states have an interest (an indisputably compelling interest, *see Day v. Holahan*, 34 F.3d 1356, 1365 (8th Cir. 1994), *cert. denied*, 513 U.S. 1127 (1995)) in maintaining the integrity of their elections. We required some demonstrable evidence that there were genuine problems that resulted from contributions in amounts greater than the limits in place. *See Russell*, 146 F.3d at 568 ("The defendants

must *prove* first that there is real or perceived undue influence or corruption attributable to large political contributions . . . .") (emphasis added); *id.* at 569 (noting that none of the defendants "provided any credible evidence" of actual corruption, nor had they proved a perception of corruption), *Carver*, 72 F.3d at 638.[3]

In reaching its conclusions concerning the constitutionality of federal campaign contribution restrictions, the *Buckley* Court noted the perfidy that had been uncovered in federal campaign financing in 1972. *See* 424 U.S. at 27 n.28. But we are unwilling to extrapolate from those examples that in Missouri at this time there is corruption or a perception of corruption from "large" campaign contributions, without some evidence that such problems really exist. *See Russell*, 146 F.3d at 569; *Carver*, 72 F.3d at 638. We will not infer that state candidates for public office are corrupt or that they appear corrupt from the problems that resulted from undeniably large contributions made to federal campaigns over twenty-five years ago. The State therefore must prove that Missouri has a real problem with corruption or a perception thereof as a direct result of large campaign contributions.

For its evidence, the State relies on the affidavit of the state senator who co-chaired the Interim Joint Committee on Campaign Finance Reform when the contribution limits were enacted. That senator pointed to no evidence that "large" campaign contributions were being made in

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[3] On the subject of the State's burden to prove its compelling interest, this Court in *Carver* quoted (with some alterations by the *Carver* Court) the following passage from *United States v. National Treasury Employees Union*, 513 U.S. 454, 475 (1995), which in turn quoted *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 664 (1994) (plurality opinion of Kennedy, J.): "When the Government defends a regulation on speech . . . it must do more than simply "posit the existence of the disease sought to be cured." . . . It must demonstrate that the recited harms are real, . . . and that the regulation will in fact alleviate these harms in a direct and material way.' "

the days before limits were in place, much less that they resulted in real corruption or the perception thereof. *See Buckley*, 424 U.S. at 28 (noting that "the problem of *large* campaign contributions [is] the narrow aspect of political association where the actuality and potential for corruption have been identified") (emphasis added). The senator did not state that corruption then existed in the system, only that he and his colleagues believed there was the "real potential to buy votes" if the limits were not enacted, and that contributions greater than the limits "have the appearance of buying votes." Affidavit of Senator Wayne Goode at ¶ 9. His statement that "[t]he greater the contribution, the greater potential there is for the appearance of and the actual buying of votes," *id.*, is conclusory and self-serving, given the senator's vested interest in having the courts sustain the law that emerged from his committee. There is no way for us to tell whether this single legislator's perception of corruption is the "public perception," whether it is objectively "reasonable," and whether it "derived from the magnitude of . . . contributions" that historically have been made to candidates running for public office in Missouri. *Russell*, 146 F.3d at 569.

As a matter of law, the State has failed to come forward with evidence to prove a compelling interest that would be served by the restrictions SB650 imposes on campaign contributions. In fact, the State has been unable to adduce sufficient evidence even to show that there exists a genuine issue of material fact regarding its alleged interest. Therefore, the limits here cannot withstand constitutional challenge.

B.

Even if the State had come forward with evidence sufficient to show that it had a compelling interest in enacting and enforcing campaign contribution limits, it cannot demonstrate that the SB650 limits on the amount of campaign contributions are narrowly tailored to serve that interest. That is, we can say as a matter of law that

the limits at issue here are so small that they run afoul of the Constitution by unnecessarily restricting protected First Amendment freedoms.

After inflation, limits of $1,075, $525, and $275 cannot compare with the $1,000 limit approved in *Buckley* twenty-two years ago.[4] We previously have acknowledged that the Court in *Buckley* did not declare that limits of less than $1,000 on contributions are unconstitutional per se, but we also recognize that the $1,000 figure provides us with something of a benchmark. *See Day*, 34 F.3d at 1366. In today's dollars, the SB650 limits appear likely to "have a severe impact on political dialogue" by preventing many candidates for public office "from amassing the resources necessary for effective advocacy." *Buckley*, 424 U.S. at 21. Even if the State had demonstrated a compelling interest, the limits set by SB650, absent the State's having proven the actual necessity for such a heavy-handed restriction of protected speech, can only be regarded as "too low to allow meaningful participation in protected political speech and association, and thus . . . not narrowly tailored to serve" the alleged interest. *Day*, 34 F.3d at 1366.

In the circumstances presented here, we do not believe that we run the risk of attempting to "fine tun[e]" the work of the Missouri legislature, or that we otherwise are exercising authority that is not ours in order to hold that these limits are overly restrictive of freedoms protected by the First Amendment. *Buckley*, 424 U.S. at 30. We so conclude because the difference between these limits of

[4] SMG contends that $1,075 in 1976 dollars is the equivalent of just $378 in purchasing power today. The State argues that SMG's use of the Consumer Price Index (CPI) to calculate the effects of inflation on dollars spent for campaign contributions is inappropriate. Nevertheless, the State has not come forward with any other measure it deems more appropriate. In fact, the subsection of SB650 that provides for the biennial adjustment of the contribution limits to account for inflation relies on the CPI for the calculation. *See* Mo. Rev. Stat § 130.032.2 (Supp. 1997).

$1,075, $525, and $275, and larger dollar limits that might be constitutionally sound (that is, narrowly tailored to serve a compelling state interest), are not "distinctions in degree" but "differences in kind." *Id. But see Kentucky Right to Life, Inc. v. Terry*, 108 F.3d 637, 648 (6th Cir.) (holding that "$1,000 limitation on direct contributions in connection with local and state elections in Kentucky is not different in kind from the $1,000 limitation on direct contributions in connection with federal elections upheld in *Buckley*"), *cert. denied*, 118 S. Ct. 162 (1997). Although, like the Court in *Buckley*, we are not prepared to state definitively what difference would be one of "degree" as compared with one of "kind," we can say these limits are overly restrictive as a matter of law. We again remind the State that it has the burden of showing that any limits it places on campaign contributions are narrowly tailored to serve the State's compelling interest in addressing proven "real or perceived undue influence or corruption attributable to large political contributions." *Russell*, 146 F.3d at 568. Once those who would regulate and limit constitutionally protected political speech satisfy their heavy burden of proof, the problem of judicial line-drawing can be expected largely to disappear.

IV.

In sum, the campaign contribution limits at issue in this case, even with the biennial adjustments for inflation that SB650 provides, violate SMG's and Fredman's First Amendment rights of free speech and association. The judgment of the District Court is reversed and the case is remanded with instructions to enter summary judgment for SMG and Fredman.

ROSS, Circuit Judge, concurring.

I concur in the decision to reverse the judgment of the district court and remand for entry of summary judgment for SMG and Fredman. I do so because I agree with

part III A of the majority opinion holding that the State failed to satisfy its evidentiary burden.

However, for the reasons stated by Judge Gibson, I do not join in part III B of Judge Bowman's opinion finding that the contribution limits are different in kind from those approved in *Buckley v. Valeo*, 424 U.S. 1 (1976).

JOHN R. GIBSON, Circuit Judge, dissenting.

I respectfully dissent.

The Court today departs from the teaching of *Buckley v. Valeo*, 424 U.S. 1 (1976), and gives far too expansive a reading to the recent decisions of this Court in *Carver v. Nixon*, 72 F.3d 633 (8th Cir. 1995), and *Russell v. Burris*, 146 F.3d 563 (8th Cir. 1998). Upon a record more slender than the one before us, *Buckley* upheld contribution limits of $1,000 per election for all federal offices, while Missouri's statute provides a $1,075 limit for statewide offices. Mo. Rev. Stat. § 130.032 (Supp. 1997). Because I cannot distinguish *Buckley* from the present case, I would uphold the contribution limits at issue.

I.

In *Carver* and *Russell*, we faced graduated annual contribution limits between $300 for statewide offices and $100 for other offices, and we held that both statutes violated the First Amendment. *Carver*, 72 F.3d at 641-44, *Russell*, 146 F.3d at 569-71. Both statutes were adopted by initiative petitions.[1] We contrasted these limitations with those at issue in *Buckley*—$1,000 per election or $2,000 per election cycle—and found them "different in

[1] The Arkansas statutes in *Russell* had a $100 limit for all state offices other than the enumerated offices which were elected statewide. *Russell*, 146 F.3d at 565. The provisions at issue in *Carver* contained limitations of $100 per election cycle for candidates in districts with fewer than 100,000 residents; $200 for candidates in districts of 100,000 or more residents; and $300 for statewide candidates. *Carver*, 72 F.3d at 635.

kind." *Carver*, 72 F.3d at 644, *Russell*, 146 F.3d at 571. For example, we observed that the limitations challenged in *Carver* were the lowest contribution limits in the nation and that the State had presented only meager evidence to justify these limitations. 72 F.3d at 641-42. The holdings of *Carver* and *Russell*, that statewide limits of $300 per election cycle "differ in kind" from the limit in *Buckley* of $2,000, point compellingly to a different conclusion in this case.

It is of interest that *Carver* contrasted Proposition A—with limits ranging from $100 to $300—to the legislation now before us, with limits then ranging from $250 to $1,000. *Id.* at 642-43. In view of the Attorney General's opinion, the dollar limits in Proposition A were the more restrictive and therefore provided the relevant limitation on the plaintiffs' contributions. *Id.* at 634-35. *Carver* struck Proposition A's limits but did not discuss the propriety of the limits now before us. Nevertheless, in contrasting Proposition A's limits with those enacted by the legislature, the similarity between the legislatively-enacted limits and those in *Buckley* was evident.

Less evident is how to distinguish *Buckley* from the present case. When we compare the $1,075 contribution limit [2] imposed by Senate Bill 650 for each election with the $1,000 upheld by *Buckley*, there is simply no difference in kind. The $1,075 limit applies to statewide races, just as *Buckley*'s $1,000 limit applies to the Senate, a statewide race, and the presidential elections. *Buckley*'s reasoning would similarly uphold Senate Bill 650's lower contribution limits in non-statewide elections. When one

[2] The legislation at issue imposes a limit of $1,075 per election, but a $2,150 limit per "election cycle." An "election cycle" is the "period of time from [the] general election for an office until the next general election for the same office." Mo. Rev. Stat. § 130.011 (Supp. 1995). It is of interest that the average household income in Missouri is about $31,000 per year.

accounts for the lower number of voters in non-statewide electoral districts, the limits at issue compare favorably with the $1,000 limit in *Buckley*, which applied to statewide races as well as to elections for the U.S. House of Representatives. There are nine House districts in Missouri, and in the most recent statewide election, the number of votes cast in these districts averaged 235,094. *Official Manual, State of Missouri* 563-65 (1997). Meanwhile, Senate Bill 650 imposes a contribution limit of $525 upon races for state senators as well as to certain other elections in districts ranging from 100,000 to less than 250,000 in population. Mo. Rev. Stat. § 130.032 (Supp. 1997). There are thirty-five Senate districts in Missouri. Seventeen of these seats were contested in 1996, and an average of 59,254 people voted in each election. *Official Manual, State of Missouri* 566-67 (1997). When the size of the state senatorial districts is contrasted with federal congressional districts as well as the entire State itself, there is plainly no "difference in kind" between these legislative limits and those countenanced by *Buckley*. Finally, the same must be said for the $275 limit for state House elections. In the last election, the number of votes cast in such districts averaged 12,325. *Id.* at 567-80. With the number of voters in such districts, I cannot conclude that the $275 limit "differs in kind" from those that *Buckley* upheld. As *Buckley* observed, Congress could have structured limits in a graduated fashion, but its failure to do so did not invalidate the legislation. *Buckley*, 424 U.S. at 30; *Carver*, 72 F.3d at 641. *Buckley* recognizes, then, that graduated limits such as Missouri's are an acceptable solution to the dangers posed by unlimited campaign contributions.

Carver, *Russell*, and Part III B of Chief Judge Bowman's opinion in this case discuss at length the effect of inflation upon the *Buckley* limits. *Carver*, 72 F.3d at 641; *Russell*, 146 F.3d at 570-71. Yet Missouri's statute expressly addresses the inflation problem, and the $1,000 limit initially enacted has now grown to $1,075. *See* Mo. Rev. Stat. § 130.032.2 (Supp. 1997) (limits adjusted for inflation). Significantly, the campaign expenditures in Missouri's statewide elections have risen markedly since Senate Bill 650's enactment, and there is no basis for rejecting the district court's conclusion that candidates for office remain "able to amass impressive campaign war chests." [3]

Buckley, of course, did not establish $1,000 as the constitutional floor for permissible contribution limitations; *see Day v. Holahan*, 34 F.3d 1356, 1366 (8th Cir. 1994). But even if it had, I would reject the argument in Part III B that inflation has dissipated the similarity between the limits in this case and those approved in *Buckley*. Inflation has not undermined *Buckley*'s precedential weight or modified its holding. The $1,000 limit upheld in *Buckley* remains and is the law today, even though we have used inflation to compare present contribution limitations with those upheld in 1976. *See Carver*, 72 F.3d at 641; *Russell*, 146 F.3d at 570-71; *Day*, 34 F.3d at 1366.[4] Despite ample opportunity to modify *Buckley*, the Supreme Court has never added the "inflation proviso" that Part III B relies upon. If *Buckley*'s holding must wax and wane with inflation, as Part III B seems to argue, then the very statute that *Buckley* upheld would now be unconstitutional, for inflation alone would render the $1,000 limit "different in kind" from when the Supreme Court upheld it. Whatever may be the pernicious effects of inflation, I am certain that the First Amendment's dictates do not depend upon the Consumer Price Index.

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[3] *See* District Court Memorandum and Order at 15-16, J. App. 191-92; *see also* J. App. 43-52.

[4] In all three cases, the limits at issue were patently "different in kind" from the limits in *Buckley*, with or without the aid of inflation. *Carver* and *Russell* struck election cycle limits ranging from $500 for statewide offices to $100 for other offices, while *Day* struck a $100 limit. *Carver*, 72 F.3d at 641-44; *Russell*, 146 F.3d at 569-71; *Day*, 34 F.3d at 1366.

More importantly, even if it were proper to adjust *Buckley* for inflation, Part III B lacks a principled yardstick to assess the constitutionality of *any* contribution limit. Its measure of what "differs in kind" and what "differs in degree" from the *Buckley* limits is standardless and lacks any explanation to support its bald conclusion that the limits at issue are "overly restrictive as a matter of law." [5]

II.

Putting to one side the facial similarity between the statute stricken today and that upheld in *Buckley*, the State has adequately justified the contribution limits at issue. *Buckley* and our cases both teach that contribution limits are subject to "the closest scrutiny." *Buckley*, 424 U.S. at 25; *Carver*, 72 F.3d at 636; *Russell*, 146 F.3d at 567. The State has the burden to demonstrate a compelling interest, which *Buckley* defined as limiting the reality or appearance of political corruption stemming from large financial contributions. 424 U.S. at 26. Both *Carver* and *Russell* found no direct evidence of real or perceived undue influence. *Carver*, 72 F.3d at 642-43; *Russell*, 146 F.3d at 569-70. Accordingly, we struck the contribution limits in both cases.

The present case is readily distinguishable from *Carver* and *Russell*. Although the House and Senate in Missouri preserve no formal legislative history, the record hardly lacks evidence that the statute at issue limits the reality or perception of undue influence and corruption. In summary judgment papers, the State presented an affidavit of Senator Wayne Goode. Goode served twenty-two years

[5] Indeed, even with the aid of inflation, it does not follow that today's contribution limits "differ in kind" from what the Supreme Court upheld in 1976. Differing costs, whether higher or lower, of new communications media (fax machines, e-mail, and the Internet, as well as more traditional modes of political speech) and modern fund-raising methods (the emergence of "soft money" is but one relevant post-*Buckley* development) simply make comparison a morass of conjecture.

in the Missouri House and nine years in the Senate before he co-chaired the Joint Interim Committee on Campaign Finance Reform that prepared Senate Bill 650, now the statute before us. The senator stated that the Committee heard "a broad spectrum of opinions . . . on the issue of campaign contribution limits." He described the committee discussions of what it costs to run a campaign and the level at which contributions threaten to corrupt political officials and to erode public confidence in the electoral process. The committee heard testimony on the issue of balancing the need to run an effective campaign against the need to limit the potential for buying influence. Balancing the concerns, the committee reached the contribution limits of $250 to $1,000 by consensus.[6] Goode and the other members believed that contributions over those limits create both the appearance that contributors could purchase the votes of elected officials and the danger of actual vote-buying. The most recent elections themselves suggest that the State has limited at least the appearance of corruption in the political process. Goode Affidavit, ¶ 11; J. App. 171. The limits prevent disproportionate funding of particular campaigns and curtail the opportunities for buying political influence. *Id.*

[6] The Court today attempts to minimize Senator Goode's affidavit as the testimony of a single legislator, but the affidavit contains the Senator's description of the legislature's conclusions, which is precisely the support cited by *Buckley* when it upheld the contribution limits imposed by Congress. *Se* 424 U.S. at 27, 28, 30. It must again be emphasized that Goode's observations are those of the co-chair of the joint legislative committee from which the limits at issue originated. To brand his affidavit as "self-serving, given the senator's vested interest in having the courts sustain the law that emerged from his committee" not only rules upon the credibility of a witness on a summary judgment motion, but also gratuitously impugns the senator's description of the evidence before the Committee, the conclusions drawn by the Committee, and his fellow legislators' first-hand knowledge of what it costs to wage a campaign and the dangers presented by contributions above the limits enacted.

This evidence stands in stark contrast to the lack of evidence on these issues in *Carver* and *Russell*.[7]

In addition to the description in Senator Goode's affidavit, what record is available to us reflects that the House and Senate in Missouri exerted considerable effort in reaching accord on the bill finally enacted. Two bills containing contribution limits were introduced in the House, House Bills 1304 and 1523. Senate Bill 801 was introduced and passed in the Senate, and the House passed the House Committee's substitute for Senate Bill 650. A conference committee substitute for the House Committee substitute for Senate Bill 650 was ultimately adopted by the House and Senate and signed by the Governor. This action in both legislative bodies demonstrated the careful attention given to this legislation and the give-and-take before final enactment. We commented upon this process in *Carver*, 72 F.3d at 645 n. 18.

Carver also recited the Supreme Court's admonition that we "must accord substantial deference to the predictive judgments of the legislature." 72 F.3d at 644 (quoting *Turner Broadcasting System v. FCC*, 512 U.S. 622, 665 (1994)). *Turner* referred to the deference owed to Congressional findings. In *Carver*, we left open the question whether state legislatures are due similar deference. *Carver*, 72 F.3d at 644. Although *Carver* rejected the State's argument that we should accord such deference to a citizens' initiative, the limitations now before us became law only after careful and informed deliberation by the legislature. The Court should not so lightly cast aside the legislature's findings in favor of its own. It is hardly counterintuitive that large campaign contributions might corrupt politics and invite public cynicism. The State has imposed only modest restrictions upon political speech, and it need not justify them with scientific precision.

[7] *Carver* and *Russell* involved only evidence of certain specific contributions, without evidence of their impact, as after-the-fact justifications for the initiative proposals at issue.

The Court's rejection of the description of Senate Bill 650's legislative underpinnings is plainly at odds with *Buckley*. Accepting the argument that the appearance of political corruption could justify the limitations then at issue, *Buckley* stated:

> Of almost equal concern as the danger of actual quid pro quo arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions. . . Here, . . . Congress could legitimately conclude that the avoidance of the appearance of improper influence "is also critical . . . if confidence in the system of representative Government is not to be eroded to a disastrous extent."

424 U.S. at 27 (quoting *C.S.C. v. Letter Carriers*, 413 U.S. 548, 565 (1973)). It is true that the State must do more than simply "posit the existence of the disease to be cured." *See Carver*, 72 F.3d at 638 (citing *United States v. National Treasury Employees Union*, 513 U.S. 454, 475 (1995) (quoting *Turner Broadcasting System v. FCC*, 512 U.S. 622, 664 (1994) (Kennedy, J., plurality))). The State, by the Goode affidavit, has demonstrated not only the dangers posed by unlimited campaign contributions, but also the conclusions reached as to "alleviat[ing] these harms in a direct and material way." *Id.*

I cannot reconcile the short shrift given the Goode affidavit by the Court today with the Supreme Court's approach in *Buckley*, which cited no actual evidence that large contributions might give rise to the appearance of political corruption and which deferred to what Congress could have reasonably concluded.[8] *See* 424 U.S. at 27,

[8] Although the need to limit the perception of political corruption by itself justifies the contribution limits at issue, today's opinion takes note of what little evidence of actual corruption was before the *Buckley* court: the "perfidy that had been uncovered in

28, 30 (Congress "could legitimately conclude" that avoiding the appearance of corruption is essential to maintaining confidence in government; Congress "was surely entitled to conclude" that disclosure limitations alone would not adequately combat corruption and its appearance; Congress "was justified in concluding that the interest in safeguarding against the appearance of impropriety requires that the opportunity for abuse inherent in the process of raising large monetary contributions be eliminated.").

Senate Bill 650 is premised upon just such reasonable legislative conclusions, as evidenced by Senator Goode's affidavit. The Court today rejects those conclusions, which closely resemble those recognized by *Buckley* when it upheld limitations strikingly similar to those now at issue. In rejecting the state's evidence, the Court sidesteps binding Supreme Court precedent and fails to provide meaningful guidance to those who might hope to craft campaign reform legislation that will survive this Court's unprecedented scrutiny.

III.

It must also be noted that the Sixth Circuit has recently approved a Kentucky law with a contribution limit of $1,000 per election year. *Kentucky Right to Life v. Terry*, 108 F.3d 637, 648 (6th Cir. 1997). The Court creates a conflict between the circuits, and in doing so disregards the inescapable similarity between the legislation that it strikes and that which the Supreme Court upheld.

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federal campaign financing in 1972." *See Buckley*, 424 U.S. at 27 n.28. Yet *Buckley*'s passing reference to the 1972 election does not aid this Court's opinion. *Buckley* nowhere supports the particular scrutiny undertaken by the Court today. Certainly, it provides no suggestion that the Goode affidavit would fail to satisfy whatever evidentiary inquiry is required to support a legislative body's conclusion that financial contributions have created or will create the appearance of corruption.

Perhaps members of the Court quarrel not only with the contribution limits at issue today, but with *Buckley* itself, as was made evident during oral argument. We are bound by *Buckley* unless and until the Supreme Court declares otherwise.

I would affirm the summary judgment of the district court upholding the contribution limits in Senate Bill 650.

A true copy.

Attest:

Clerk, U.S. Court of Appeals, Eighth Circuit.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 98-2351

SHRINK MISSOURI GOVERNMENT PAC,
a political action committee;
ZEV DAVID FREDMAN,
Plaintiffs-Appellants,

v.

RICHARD ADAMS, in his official capacity as a Member of the Missouri Ethics Commission; PATRICIA FLOOD, in her official capacity as a Member of the Missouri Ethics Commission; ROBERT GARDNER, in his official capacity as a Member of the Missouri Ethics Commission; ERVIN HARDER, in his official capacity as a Member of the Missouri Ethics Commission; JOHN HOWALD, in his official capacity as Chairman of the Missouri Ethics Commission; ELAINE SPIELBUSCH, in her official capacity as a Member of the Missouri Ethics Commission; JEREMIAH W. NIXON, in his official capacity as Missouri Attorney General; ROBERT P. MCCULLOUGH, in his official capacity as St. Louis County Prosecuting Attorney,
Defendants-Appellees,

JOAN BRAY, a Missouri State Representative; COMMON CAUSE, a non-profit, non-partisan membership corporation organized under the laws of the District of Columbia,
Movants.

Motion for Injunction Pending Appeal

Filed: July 23, 1998

Before BOWMAN, Chief Judge, ROSS and JOHN R. GIBSON, Circuit Judges.

ORDER

On May 12, 1998, the District Court[1] upheld Missouri's $275, $525, and $1,075 limits on campaign contributions. *See Shrink Mo. Gov't PAC v. Adams*, No. 4:98CV357, Memorandum and Order (E.D. Mo. May 12, 1998) (upholding provisions of Mo. Ann. Stat. § 130.032 (West Supp. 1998)). On May 14, 1998, plaintiffs Shrink Missouri Government PAC (SMG) and Zev David Fredman appealed from that judgment. They seek an injunction during the pendency of their appeal.

To be entitled to an injunction pending appeal, appellants must meet the requirements outlined in *Dataphase Systems, Inc. v. CL Systems, Inc.*, 640 F.2d 109 (8th Cir. 1981). Under *Dataphase*, they must show (1) the likelihood of success on the merits; (2) the likelihood of irreparable injury to appellants absent an injunction; (3) the absence of any substantial harm to other interested parties if an injunction is granted; and (4) the absence of any harm to the public interest if an injunction is granted. 640 F.2d at 114; *see also Hilton v. Braunskill*, 481 U.S. 770, 771 (1987). *Fargo Women's Health Org. v. Schafer*, No. 93-1579 (8th Cir. Mar. 30, 1993), *reprinted in Fargo Women's Health Org. v. Schafer*, 18 F.3d 526, 538 (8th Cir. 1994) (appendix). Having considered the briefing supplied by appellants in support of their motion and

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[1] The Honorable Catherine D. Perry, United States District Judge for the Eastern District of Missouri.

by the state appellees in opposition thereto, we conclude that all four factors support the entry of an order enjoining appellees from enforcing the challenged campaign contribution limits pending a final determination by this Court.[2]

The most important of the *Dataphase* factors is the appellants' likelihood of success on the merits. In view of our prior case law, including *Russell v. Burris*, Nos. 97-3922/4033/4038, slip op. (8th Cir. June 4, 1998), we conclude there is a strong likelihood that appellants will prevail when the case is heard on the merits. All campaign contribution limits restrict political speech, and thus they implicate the First Amendment. We are particularly concerned that it seems likely the state has failed in its burden of proof to show "that there is real or perceived undue influence or corruption attributable to large political contributions . . . and . . . that [the contribution limits] are narrowly tailored to address that reality or perception." *Id.* at 10-11. Similarly, we think it is likely the state has failed to show "that a reasonable person could perceive, on the basis of the evidence presented at trial, that such contributions make for undue influence or spawn corruption." *Id.* at 11. We note that the campaign contribution limits here at issue are, after adjustment for inflation, dramatically lower than the $1,000 limit upheld in *Buckley v. Valeo*, 424 U.S. 1, 23-38 (1976), and do not appear to be narrowly tailored to address any legitimate interest in avoiding corruption or the appearance of corruption.

The other three *Dataphase* factors also support an injunction pending appeal. Without an injunction pending our final decision, SMG and Fredman likely will suffer

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[2] This Court will reach the merits of the case on an expedited basis. An accelerated briefing schedule has been established requiring all briefing to be completed by August 10, 1998, and oral argument has been set for August 21, 1998 in Kansas City. A final decision on the merits will not be long delayed.

immediate and irreparable harm to their First Amendment rights because the primary election for which Fredman is a candidate will be held on August 4, 1998. SMG has contributed $1,075, the maximum sum permitted under the challenged Missouri statutes, to the "Fredman for Auditor" committee, and any additional contribution would run afoul of the criminal and civil sanctions imposed by those statutes. Fredman has accepted SMG's $1,075 contribution. He would accept additional contributions in excess of this amount but for the sanctions imposed for violations of the challenged Missouri statutes. The contribution limits thus work to restrict SMG in the promotion of its political viewpoints and in its expression of support for candidates who share its political goals. Likewise, the limits work to restrict Fredman from garnering the sums necessary to promote his campaign for state auditor and to deliver his political message.

Concerning the question of substantial harm to other interested parties if an injunction is granted, we are unable to discern any such harm. An order enjoining enforcement of the challenged Missouri campaign contribution limits merely restores the situation that existed before 1994 when the state did not limit campaign contributions. Finally, we believe the public interest in free political speech weighs heavily in favor of enjoining the challenged contribution limits pending this Court's final determination on the merits.

For the reasons stated, the motion for an injunction pending appeal is granted. Appellees are enjoined from enforcing the challenged campaign contribution limits pending a final decision by this Court on the merits of the case.

A true copy,

Attest: /s/ Michael E. Gans

Clerk, U.S. Court of Appeals, Eighth Circuit.

APPENDIX C

UNITED STATES DISTRICT COURT
E.D. MISSOURI
EASTERN DIVISION

No. 4:98CV357 CDP

SHRINK MISSOURI GOVERNMENT PAC, *et al.*,
Plaintiffs,

v.

RICHARD ADAMS, *et al.*,
Defendants.

May 12, 1998

MEMORANDUM AND ORDER

PERRY, District Judge:

This case draws into question the validity of Missouri's limits on contributions to candidates for state elected office. Contending that those limits violate their first amendment rights, plaintiffs seek an injunction preventing enforcement of the following provisions of Senate Bill 650, codified at Mo. Ann. Stat. § 130.032 (West Supp. 1998):

1. Provisions that limit "the amount of contributions made by or accepted from any person other than the candidate in any one election" to a maximum of (a) $1,075.00 to elect an individual to the offices of governor, lieutenant governor, secretary

of state, state treasurer, state auditor, or attorney general, or any other office if the population of the relevant electoral unit is at least 250,000, (b) $525.00 to elect an individual to the office of state senator or any other office if the population of the relevant electoral unit is at least 100,000 but less than 250,000, (c) $275.00 to elect an individual to the office of state representative or any other office if the population of the relevant electoral unit is less than 100,000. *See* Mo. Ann. Stat. § 130.032.1.

2. A provision adjusting the above-mentioned limits for inflation. Mo. Ann. Stat. § 130.032.2.

3. A provision making "candidate committees, exploratory committees, campaign committees and continuing committees, other than those continuing committees which are political party committees" subject to the above-mentioned limits. Mo. Ann. Stat. § 130.032.3.

4. A provision imposing on committees found in violation of the above-mentioned limits a penalty of an amount equal to the nonallowable contribution plus a $1,000 surcharge per such nonallowable contribution. Mo. Ann. Stat. § 130.032.7.

On March 4, 1998, the Court heard oral argument from all parties on plaintiffs' motion for a temporary restraining order. The Court denied the motion on March 9, concluding that on the record before it, plaintiffs had failed to show a likelihood of success on the merits or that the baalnce of harms and public interest weighed in their favor. *See Dataphase Sys., Inc. v. C L Sys.*, 640 F.2d 109 (8th Cir.1981) (en banc).

On March 18, the Court entered a case management order. In that order, the Court, generally adopting a proposal jointly submitted by the parties, established an ex-

pedited briefing schedule for dispositive motions. In accordance with that schedule, the parties have filed cross-motions for summary judgment. Based on the undisputed facts and the relevant case law, the Court concludes that defendants are entitled to judgment as a matter of law. It will enter judgment accordingly, and will deny plaintiffs' motion for injunctive relief.[1]

I. *Background*

This action comes as the perhaps inevitable consequence of the Eighth Circuit's 1995 decision in *Carver v. Nixon*, 72 F.3d 633 (8th Cir.1995), *cert. denied*, 518 U.S. 1033, 116 S.Ct. 2579, 135 L.Ed.2d 1094 (1996), a case that invalidated the campaign contribution limits contained in Proposition A, an initiative passed by the Missouri electorate in the November 1994 election. Proposition A placed "per election cycle" [2] limits on contributions by individuals or committees (other than candidate committees) to a candidate or his or her candidate committee. Those limits were as follows: (1) $100 per candidate in districts with fewer than 100,000 residents, (2) $200 per non-statewide candidate in districts of 100,000 or more residents, and (3) $300 per statewide candidate (i.e., candidates seeking election to the office of Governor,

[1] Given its disposition of this matter, the Court believes that it need not reach defendant Robert P. McCullough's motion to dismiss or, in the alternative, to join as necessary and indispensable parties all prosecutors in the state of Missouri. For the same reason, the Court will deny as moot the motion of Joan Bray to intervene as a defendant and the motion of Common Cause to participate as amicus curiae.

[2] An election cycle includes both the primary and the general election. *See* Mo. Ann. Stat. § 130.011(16) (West 1997); *Carver*, 72 F.3d at 635 n. 3. A 1997 amendment to § 130.011 deleted the definition of "election cycle." *See* Mo. Ann. Stat. § 130.011 (West Supp.1998). The limits contained in § 130.032 (i.e., the statute at issue here), unlike those of Proposition A, apply on a per election basis. *See* Mo. Ann. Stat. § 130.032 (West Supp.1998).

Lieutenant Governor, Attorney General, Auditor, Treasurer, and Secretary of State).

Prior to the November 1994 election, the Missouri General Assembly enacted a campaign finance law, known as Senate Bill 650, which contained the campaign contribution limits set forth in the first paragraph of this memorandum. Senate Bill 650's limits were to take effect on January 1, 1995. After Proposition A's passage, however, the Missouri attorney general determined that the initiative's lower limits controlled.

Following the attorney general's determination, Carver, a political contributor, brought suit to enjoin Proposition A's enforcement, arguing that the law unconstitutionally interfered with his ability to support political candidates. The district court denied the injunction, *Carver v. Nixon*, 882 F.Supp. 901 (W.D.Mo.1995), and the Eighth Circuit reversed. The court of appeals concluded that the district court had erred in extending the Supreme Court's holding in *Buckley v. Valeo*, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976) (per curiam), "to the infinitely broader interest of limiting all, not just large, campaign contributions," [3] 72 F.3d at 639. Quoting the Supreme Court's decision in *Citizens Against Rent Control v. Berkeley*, 454 U.S. 290, 102 S.Ct. 434, 70 L.Ed.2d 492 (1981), the court stated, " '*Buckley* identified a single narrow exception to the rule that limits on political activity were

[3] In *Buckley*, the Supreme Court, applying a strict scrutiny standard of review, held that provisions of the Federal Election Campaign Act ("FECA") establishing a $1,000 limitation on contributions to campaigns for federal elected office were constitutional. In upholding the limitation, the Court noted that limiting the amount a person may give to a candidate "involves little direct restraint on his political communication, for it permits the symbolic expression of support evidenced by the contribution but does not in any way infringe the contributor's freedom to discuss candidates and issues." 424 U.S. at 21, 96 S.Ct. 612. FECA's limits remain unchanged to this day. *See* 2 U.S.C. § 441a.

contrary to the First Amendment. The exception relates to the perception of undue influence of *large contributors to a candidate . . . .*'" *Carver*, 72 F.3d at 638 (quoting 454 U.S. at 296, 102 S.Ct. 434) (emphasis added by the *Carver* court).

Describing Proposition A's limits as "dramatically lower" than those approved in *Buckley*, *id.* at 641-42, and lower, in fact, than those of any other state, *id.* at 642, the *Carver* court concluded that the initiative's limits were "not closely drawn to reduce corruption or the appearance of corruption associated with large campaign contributions." *Id.* at 644. The court found the following factors relevant: (1) after adjusting for inflation, Proposition A's limits represented between two and six percent of the $2,000 per election cycle limit approved of in *Buckley*, *id.*, at 642 n. 8,[4] (2) other states had larger contribution limits, *id.* at 641-42, (3) Senate Bill 650 provided a "back-up" in the event of Proposition A's invalidation. *id.* at 642 ("The question is not simply that of some limits or none at all, but rather Proposition A as compared to those in Senate Bill 650 . . . ."),[5] and (4) the impact of Proposition A's limits affected a much higher percentage

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[4] In *Day v. Holahan*, 34 F.3d 1356 (8th Cir. 1994), the Eighth Circuit enunciated the principle that the effect of inflation should be considered in determining the constitutionality of campaign contribution limits. The *Day* court invalidated a Minnesota statute limiting contributions to and from political committees to $100. While recognizing that "the *Buckley* limit was never declared to be a constitutional minimum," *id.* at 1366, the court observed that "a $100 contribution in 1976 [the year that *Buckley* was decided] would have a value of $40.60 in 1994 dollars, or approximately four percent of the $1,000 limit approved in *Buckley*." *Id.*

[5] In dicta, the court appeared to endorse Senate Bill 650's limits. *See* 72 F.3d at 641 ("[W]e generally accept the limits established by the legislature."); *see also id.* at 645 (stating that there are "substantial reasons for according deference to legislative enactments that do not exist with respect to proposals adopted by initiative").

of contributors than did the federal $1,000 limit. *Id.* at 643. As a result of the *Carver* decision, Proposition A's limits were supplanted by those contained in Senate Bill 650.

II. *Facts*

Plaintiff Shrink Missouri Government PAC ("Shrink PAC") is a political action committee. Plaintiff Zev David Fredman is a candidate in the August 1998 Republican primary for the office of Missouri state auditor. Fredman, who has never before run for statewide political office, has formed a candidate committee ("Fredman for Auditor"), filed for office, and paid the required filing fee. The defendants in this matter are the Missouri Ethics Commission's chairman (John Howald) and members (Richard Adams, Patricia Flood, Robert Gardner, Ervin Harder, and Elaine Spielbusch), who are responsible for administering the provisions of the Missouri campaign finance laws, the state attorney general (Jeremiah W. Nixon), who advises the ethics commission and enforces the campaign finance laws, and the prosecuting attorney of St. Louis County (Robert P. McCullough), who is also responsible for enforcing those laws.

Shrink PAC raises money from Missouri voters and contributes those funds to candidates for Missouri elective office. It made contributions to certain of those candidates in the 1994, 1996, and 1997 elections. On June 23, 1997, it made a $1,025 contribution to "Fredman for Auditor," and made an additional $50 contribution on February 25, 1998. Shrink PAC states that but for Missouri's campaign contribution limitations, it would make additional contributions to Fredman's campaign. Fredman believes that he can wage an effective campaign for auditor only if he can garner contributions in excess of those provided for under current Missouri law.

III. *Discussion*

In determining whether summary judgment should issue pursuant to Rule 56(c) of the Federal Rules of Civil Procedure, a court views the facts and any inferences to be drawn therefrom in the light most favorable to the nonmoving party. The moving party bears the burden of both establishing the absence of a genuine issue of material fact and showing that it is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986). In this case, the facts are undisputed. The issue is purely legal: do Missouri's limits on campaign contributions violate the first amendment?

It is firmly settled that regulation of first amendment rights is "always subject to exacting judicial review." *Citizens Against Rent Control*, 454 U.S. at 294, 102 S.Ct. 434. "Exacting review" means "strict scrutiny." A court must strike a challenged regulation that is not "narrowly tailored to achieve a compelling governmental interest." *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 347, 115 S.Ct. 1511, 131 L.Ed.2d 426 (1995); *Carver*, 72 F.3d at 638.

Plaintiffs argue that defendants must demonstrate that campaign contributions in excess of the statutory limits cause some "real harm," i.e., that such contributions cause either corruption or the appearance of corruption. If a showing of "real harm" is required (the state claims it is not), the Court finds that defendants here have made that showing.

"A State indisputably has a compelling interest in preserving the integrity of its election process." *Eu v. San Francisco Cty. Democratic Central Comm.*, 489 U.S. 214, 231, 109 S.Ct. 1013, 103 L.Ed.2d 271 (1989). Defendants claim that contributions exceeding the statutory limits create a perception that the individuals or entities making those contributions are attempting to curry favor with the state's elected officials. Eliminating or at least limiting that perception is a compelling governmental interest, as *Buckley* makes clear. *See Buckley*, 424 U.S. at 27, 96 S.Ct. 612. As Missouri does not collect or preserve legislative history, it is obviously impossible for defendants to supply a contemporaneous account of the reasoning and motivations behind Senate Bill 650. They have, however, provided evidence in the form of an affidavit from the state senator who co-chaired the Interim Joint Committee on Campaign Finance Reform at the time of Senate Bill 650's passage. In that affidavit, the senator stated that the committee "heard testimony on and discussed the significant issue of balancing the need for campaign contributions versus the potential for buying influence." He further testified to his belief that contributions in excess of the limits set by Missouri "have the apearance of buying votes as well as the real potential to buy votes." [6]

A perception of influence peddling is "real harm" regardless of whether such peddling is actually afoot. *Buckley*, 424 U.S. at 27, 96 S.Ct. 612 ("Of almost equal concern as the danger of actual *quid pro quo* arrange-

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[6] Newspaper stories and editorials from the same period tend to support the senator's statements. *See, e.g.*, Jo Mannies, Auditor Race May Get Too Noisy To Be Ignored, *St. Louis Post-Dispatch*, Sept. 11, 1994, at 4B (reporting that Republican candidate for Missouri state auditor received a $40,000 contribution from a St. Louis-based brewery and $20,000 from a St. Louis bank); John A. Dvorak, Election Reform Backed Lid on Contributions to Campaigns Wins Carnahan's Support, *Kansas City Star*, Nov. 14, 1993, at B1 (quoting Governor Mel Carnahan as stating, "We need a system that will make sure that our democratic institutions care as much about John Doe and Jane Doe as they do about any big company or any wealthy individual"); Editorial, The Central Issue is Trust, *St. Louis Post-Dispatch*, Dec. 31, 1993, at 6C (observing that Missouri state treasurer's choice of Central Trust Bank of Jefferson City to handle most of the state's banking business raised an appearance of favoritism, as the treasurer had accepted approximately $20,000 from the same bank in his 1992 election campaign).

ments is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large financial contributions."). To the extent Citizen Smith thinks that an elected official is giving Citizen Jones preferential treatment based on the latter's largess in the most recent election, the confidence of Citizen Smith in the integrity of her government is diminished. The Court does not believe that polling the citizenry is required in order to demonstrate that the integrity of a state's election process is facing a perceived threat.[7] As the recipients of campaign contributions, members of the legislature are uniquely qualified to gauge whether allowing those contributions to go unchecked endangers our democratic system of government, and, if so, to prescribe an appropriate remedy therefor. As the Supreme Court has observed, "Sound policymaking

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[7] In some sense, the vote on Proposition A might be viewed as such a poll. The initiative was depicted by the media as an attempt to "temper the influence of special interests and put political newcomers on a more level playing field at election time." Kevin Q. Murphy, Low-key Proposition A Would Refashion Election Financing, *Kansas City Star*, Oct. 27, 1994, at A1; Editorial, Four Proposals on the Missouri Ballot, *St. Louis Post-Dispatch*, Oct. 20, 1994, at 6B ("Proposition A would make further improvements to control influence-buying in elections that lawmakers were not willing to impose on themselves."); Voters Guide, *St. Louis Post-Dispatch*, Nov. 6, 1994, at 8 (describing Proposition A's goal as "limit[ing] the influence of special interests in government by putting low ceilings on how much anyone can give to a political candidate"). If the media's views are at all reflective of those of the public at large, then the fact that Missouri's voters voted for Proposition A in rather over-whelming numbers (the initiative was supported by seveny-four percent of those voting) is some indication that they shared those views. *See* Kathy Richardson, Letter to the Editor, *St. Louis Post-Dispatch*, Nov. 5, 1994, at 16 (describing political system as "money-influenced" and urging other citizens to vote for Proposition A); Robyn Steely, Editorial, Money and State Senators, *St. Louis Post-Dispatch*, Aug. 21, 1994, at 3B (claiming that "business interests, large contributions, war chests, inadequately disclosed information and myths about campaign financing all taint our democratic process").

often requires legislators to forecast future events and to anticipate the likely impact of these events based on deductions and inferences for which complete empirical support may be unavailable." *Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 665, 114 S.Ct. 2445, 129 L.Ed.2d 497 (1994); *see also Munro v. Socialist Workers Party*, 479 U.S. 189, 195-96, 107 S.Ct. 533, 93 L.Ed.2d 499 (1986) ("Legislatures, we think, should be permitted to respond to potential deficiencies in the electoral process with foresight rather than reactively, provided that the response is reasonable and does not significantly impinge on constitutionally protected rights."); *Bullock v. Carter*, 405 U.S. 134, 145, 92 S.Ct. 849, 31 L.Ed.2d 92 (1972) ("Although we have no way of gauging the number of candidates who might enter primaries in Texas if access to the ballot were unimpeded by the large filing fees in question here, we are bound to respect the legitimate objectives of the State in avoiding overcrowded ballots."). Even for one unschooled in politics, no great deductive leap is required to reach a conclusion that the contribution of substantial sums to a candidate for political office gives rise to a perception among the public that the contributor is trying to curry favor with the recipient.[8] *See*

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[8] In *Carver*, the Eighth Circuit held that evidence of a poltical action committee's $420,000 contribution could not support the state's claim that Proposition A's contribution limits were narrowly tailored. *See* 72 F.3d at 642. However, under *Buckley*, that same evidence would support a showing of "real harm." As the *Carver* court noted, the Supreme Court in *Buckley*, in discussing large contributions, "specifically referred to disturbing examples surfacing after the 1972 election" that had been cited by the D.C. Circuit. 72 F.3d at 638 (citing 424 U.S. at 27, 96 S.Ct. 612). Those examples included a dairy industry pledge of two million dollars in support of President Nixon's re-election campaign, presidential campaign contributions totaling $1.8 million from thirty-one individuals holding ambassadorial appointments from President Nixon, and an additional three million dollars from six individuals seeking such appointments from the president. *See Buckley v. Valeo*, 519 F.2d 821, 839-40 and nn.36-38; *Buckley*, 424 U.S. at 27 n. 6, 96 S.Ct. 612 (citing the portion of the D.C. Circuit's opinion just mentioned);

Turner Broad., 512 U.S. at 666, 114 S.Ct. 2445 ("'[W]hen trenching on first amendment interests . . ., the government must be able to adduce either empirical support or at least sound reasoning on behalf of its measures.'") (quoting *Century Communications Corp. v. F.C.C.*, 835 F.2d 292, 304 (D.C.Cir.1987)); *Burson v. Freeman*, 504 U.S. 191, 207, 112 S.Ct. 1846, 119 L.Ed. 2d 5 (1992) (describing the link between ballot secrecy and a restriction on the display or distribution of campaign materials near polling places as one of "common sense"). Plaintiffs' contention that defendants have not shown "real harm" must fail.

Plaintiffs appear to be implying that the Supreme Court's decision in *Buckley* no longer sits on a firm foundation. But, the case upon which plaintiffs most heavily rely, *Colorado Republican Fed'l Campaign Comm. v. Federal Election Comm'n*, 518 U.S. 604, 116 S.Ct. 2309, 135 L.Ed.2d 795 (1996), simply does not support that proposition. The Court in *Colorado Republican* held that the first amendment prohibits applying a federal statutory limit on a political party's expenditures made "in connection with" a general election congressional campaign to a political party's expenditure that is made without coordination with any candidate. 116 S.Ct. at 2312. In announcing its decision, the Court issued four separate opinions: Justice Breyer announced the Court's judgment and authored an opinion joined by Justices O'Connor and Souter; Justice Kennedy (joined by Chief Justice Rehnquist and Justice Scalia) wrote an opinion concurring in the judgment and dissenting in part; Justice

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Carver, 72 F.3d at 638 n. 5 (same). Although all of those examples involved contributions far in excess of $1,000, the Supreme Court nevertheless rejected the appellants' objection that the $1,000 restriction was "unrealistically low because much more than that amount would still not be enough to exercise improper influence over a candidate or office-holder, especially in campaigns for statewide or national office." 424 U.S. at 30, 96 S.Ct. 612.

Thomas (joined, in part, by Chief Justice Rehnquist and Justice Scalia wrote a separate opinion concurring in the judgment and dissenting in part); and Justice Stevens (joined by Justice Ginsburg) filed a dissenting opinion. All four authors discussed *Buckley*, and three of them (representing a total of eight justices) implicitly endorsed its holding. *See id.* 116 S.Ct. at 2315 ("Beginning with *Buckley*, the Court's cases have found a 'fundamental constitutional difference between money spent to advertise one's views independently of the candiate's campaign and money contributed to the candidate to be spent on his campaign.") (opinion by Breyer, J.); *id.* 116 S.Ct. at 2321 ("[I]t is true that contributions can be restricted consistent with *Buckley*. . . .") (opinion by Kennedy, J.); *id.* 116 S.Ct. at 2332 ("It is quite wrong to assume that the net effect of limits on contributions . . . will be adverse to the interest in informed debate protected by the First Amendment.") (opinion by Stevens, J.). Only Justice Thomas, in a section of his opinion that neither Chief Justice Rehnquist nor Justice Scalia joined, urged that *Buckley* be overruled. *Id.* 116 S.Ct. at 2325 (expressing belief that the distinction between expenditures and contributions "lacks constitutional significance") (opinion by Thomas, J.). In sum, then, *Buckely*'s holding is still sound.

Plaintiffs also argue that Missouri's campaign contribution limits are not "narrowly tailored." As mentioned above, the Eighth Circuit in *Day* strongly implied that the impact of inflation should be taken into account in determining whether a given limit on campaign contributions passes first amendment muster. *See* 34 F.3d at 1366. *Carver* reiterated that concern: "Our observation in *Day* about the effect of inflation applies with equal force in this case." 72 F.3d at 641. Citing those two decisions, plaintiffs claim that contribution limits must be adjusted for inflation, and that, so adjusted using the

Consumer Price Index ("CPI"), $1,075 today is the equivalent of only $378 in 1976.[9]

In holding that a $100 limit on contributions to and from political committees was "too low to allow meaningful participation in protected political speech and association," 34 F.3d at 1366, the court in *Day* noted that the $1,000 ceiling upheld in *Buckley* was not a "constitutional minimum," *id.*, a statement which *Buckley* emphatically supports. As the *Buckley* Court observed, "The quantity of communication by the contributor does not increase perceptibly with the size of his contribution. . . . At most, the size of the contribution provides a very rough index of the intensity of the contributor's support for the candidate." 424 U.S. at 21, 96 S.Ct. 612. As noted *supra*, the Court rejected a claim that the $1,000 ceiling was overly broad in that "much more than that amount would still not be enough" for an unscrupulous contributor to exercise improper influence. *Id.* at 30, 96 S.Ct. 612. Quoting the D.C. Circuit's opinion in *Buckley*, the Court stated, " '[i]f it is satisfied that some limit on contributions is necessary, a court has no scalpel to probe whether, say, a $2,000 ceiling might not serve as well as $1,000.' " *Id.* at 30, 96 S.Ct. 612 (quoting 519 F.2d at 842). The Court concluded, "Such distinctions in degree become significant only when they can be said to amount to differences in kind." *Id.* A "difference in kind" might arise, the Court suggested, if the limitation at issue "prevented candidates and political committees from amassing the resources necessary for effective advocacy." *Id.* 424 U.S. at 21, 96 S.Ct. 612. In approving FECA's contribution ceiling, the Court noted that it did not reduce "the total amount of money potentially available to promote political expression," *id.* at 22, 96 S.Ct. 612, but, instead,

[9] Likewise, $525 today is the equivalent of $184.80 in 1976, and $275 the equivalent of $96.70 in 1976.

"merely . . . require[d] candidates and political committees to raise funds from a greater number of persons and to compel [would-be big donors] to expend [their] funds on direct political expression." *Id.*

The Court finds that the effect of inflation since *Buckley* was decided has not created a "difference in kind" between a $1,000 contribution in 1976. and a $1,075 contribution in 1988.[10] First, the evidence shows that despite Missouri's contribution limits, candidates for state elected office are still quite able to raise funds sufficient to run effective campaigns. For example, in the 1992 race for secretary of state, expenditures by the seven candidates totaled $646,749.53 (including both the primary and the general elections). In the 1996 race for that office, the three candidates spent a total of $1,819,052.69. Likewise, in the 1992 race for lieutenant governor the six candidates spent $1,974,066.33, as compared to the $1,001,219.08 spent by the two candidates for the same office in 1996. Despite Missouri's contribution limits, candidates for political office in the state are still able to amass impressive campaign war chests.[11]

[10] Shrink PAC claims that the federal limit applicable to it is $5,000. However, the $5,000 limit applies only to "multicandidate" political committees. 2 U.S.C. § 441a(2). In order to qualify as such a committee, an entity must, *inter alia*, have received contributions from more than fifty persons and made contributions to five or more candidates for federal office. *Id.* at § 441a(4). Shrink PAC has provided no evidence that it meets any of those criteria.

[11] In *Carver*, the court indicated that an examination of the contribution limits imposed by other states was appropriate in determining whether Missouri's ceilings were "narrowly tailored." 72 F.3d at 641-42. In striking Proposition A, the court observed that the initiative would give Missouri "the lowest contribution limits in the nation." *Id.* at 642. Such is not the case with § 130.032. *See, e.g.*, Alaska Stat. § 15.13.070(c)(1) (Michie 1996) ($1,000 per year limit on contributions to a candidate by a group other than a political party); Ariz.Rev.Stat. Ann. § 16-905 (West Supp.1997) ($750 per election limit on contributions from a single political

In striking the $100 contribution limit at issue in *Day*, the Eighth Circuit expressed concern that between one-fourth and one-third of the contributions made by one of the plaintiffs therein exceeded that amount in the most recent election cycle. 34 F.3d at 1366. Similarly, in *Carver*, the court observed that "in the 1994 Auditor's race, 19.5 percent of the contributors gave more than the $300 Proposition A limit, but less than the $1,000 Senate Bill 650 limit," and that "in the State Representative race, 19.0 percent of the contributors gave more than the $100 Proposition A limit, but less than the $250 Senate Bill

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commitee to a candidate for statewide office, $300 if non-statewide); Conn. Gen.Stat. § 9-333q(a) (1997) ($1,500 per election limit on contributions to a candidate for lieutenant governor, secretary of state, treasurer, comptroller, or attorney general, $500 for candidates for state senator, $250 for candidates for state representative); Del.Code Ann. tit. 15, § 8010(a) (1993) ($1,200 limit per "election period" limit on contributions to a candidate for statewide office, $600 if non-statewide); Fla. Stat. Ann. § 106.08(1)(a) (West Supp.1998) ($500 per election limit); Ky.Rev.Stat. Ann. § 121.150 (6) (Banks-Baldwin 1998) ($1,000 per election limit); Me.Rev. Stat. Ann. tit. 21-A, § 1015.2 (West Supp.1997) ($250 per election limit effective January 1, 1999, on contributions to non-gubernatorial candidates); Minn.Stat. Ann. § 10A.27.1(c) (West 1997) ($500 per election year limit on contributions to candidates for the office of secretary of state, state treasurer, or state auditor); Or.Rev.Stat. § 260.160(1) (1997) ($500 per election limit on contributions to statewide candidates, $100 if non-statewide); S.D. Codified Laws § 12-25-1.1 (Michie 1995) ($1,000 per year limit on individual contributions to a single candidate for state-wide office, $250 if non-statewide); Vt. Stat. Ann. tit. 17, § 2805(a) (1997 Supp.) (effective November 14, 1998, $200 per election limit on contributions from a political committee to a candidate for state representative, $300 to a candidate for state senator, $400 to a candidate for governor, lieutenant governor, secretary of state, auditor of accounts, or attorney general); *see also* Ann. Laws of Mass. ch. 55, § 6A (Lexis 1998 Supp.) (annual limit of $37,500 on total contributions that may be made by political action committees to candidates for state secretary, state treasurer, and state auditor, $18,750 for candidates for state senator, $7,500 for candidates for state representative).

650 limit." 72 F.3d at 643; *see also Buckley*, 424 U.S. at 21 n. 23 ("Statistical findings agreed to by the parties reveal that approximately 5.1% of the $73,483,613 raised by the 1,161 candidates for Congress in 1974 was obtained in amounts in excess of $1,000."). According to data produced by defendants, of the 1,973 contributors to condidates for state auditor in the 1994 general election, 1,926 (or 97.62 percent) made aggregate contributions of $2,000 or less. Only forty-seven of the 1,973 (or 2.38%) made aggregate contributions of more than $2,000. Similarly, in the 1992 general election for secretary of state, less than 1.5% of the contributors made aggregate contributions exceeding $2,000. Thus, there is no reason to believe that Missouri's contribution limits have any "dramatic adverse effect" on funding campaigns for state office.[12] *See id.* 424 U.S. at 21, 96 S.Ct. 612.

Last but not least, the Court does not believe that invalidating Missouri's contribution limits would be consistent with *Buckley*. It is clear from Eighth Circuit precedent that *Buckley* controls the issues in this case. *See Carver*, 72 F.3d 633. And it is also clear, plaintiffs' suggestions to the contrary notwithstanding, that *Buckley* remains good law. Therefore, to hold that in the context of contribution limits on state elections, the monetary limits approved of in *Buckley* are invalid would, in the Court's view, constitute an indirect—but still improper—overruling of that decision. Missouri's statute, unlike FECA, already does take inflation into account. It specifically requires that the contribution limits prescribed therein "shall be increased on the first day of January in each even-numbered year by multiplying the base year amount [defined as the contribution limits effective on January 1, 1995] by the cumulative consumer price index

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[12] Under *Colorado Republican*, of course, Shrink PAC is free to expend funds in support of Fredman without regard to § 130.032's limits, so long as no coordination between the committee and the candidate takes place.

. . . for all years since January 1, 1995." [13] Mo.Rev.Stat. § 130.032.2. Does the Constitution require Missouri to do more, especially given that FECA contains no provision adjusting for inflation the limits approved of in *Buckley?* The Court believes the answer to that question is no.

Certainly, taking account of inflation makes economic sense in theory, but it may be substantially more difficult in practice. For example, is using the CPI really the appropriate method? After all, the CPI cannot, by definition, reflect increases in the cost of non-consumer services such as conducting a mass-mailing, operating a telephone bank, or running a thirty-second radio or television advertisement. And if some or all of these costs have risen, perhaps they are offset, at least to some degree, by post-1976 technological advances such as the fax machine, e-mail, and the Internet (a candidate might, for example, be able to cheaply and effectively promulgate his or her views by creating a web page). Should not such cost-reducing innovations affect the inflation calculus?

The Court further observes that neither the *Day* panel nor the *Carver* panel held that inflation was the *only* factor to be considered. Indeed, because the state's "compelling interest" encompasses a desire to avoid even the perception of corruption, it might well be pertinent to inquire whether the average Missourian views $1,000 as a large or small amount. In this regard, the Court notes that the median income of a Missouri household in 1994 was $31,046, an amount that, in constant 1995 dollars, was actually less than it had been nine years earlier ($31,073 in 1985). *See* Statistical Abstract of the United States 468 (117th ed.1997). The Court suspects that the head of a family earning less than $32,000 would certainly consider "large" a political contribution in excess of $1,075.

[13] In accordance with that provision, the Missouri Ethics Commission adjusted Missouri's limits effective January 1, 1998.

In the end, perhaps this analysis illustrates what the *Buckley* Court meant when it said that a judge has "no scalpel to probe," whether a $1,000 or a $2,000 contribution ceiling would be more appropriate. 421 U.S. at 30, 95 S.Ct. 1365; *see also id.* (declaring that Congress's failure to structure FECA's contribution limitations to take account of the graduated expenditure limitations for congressional and presidential campaigns "does not invalidate the legislation"). While it is undoubtedly true that $1,000 today will not buy what it did in 1976, a court analyzing whether a given statute comports with the first amendment must hesitate before "imposing judicial formulae so rigid that they become a straightjacket that disables Government from responding to serious problems." *Denver Area Educ. Telecomms. Consortium, Inc. v. F.C.C.*, 518 U.S 727, 116 S.Ct. 2374, 2385, 135 L.Ed.2d 888 (1996). There is more than ample reason to defer to the considered judgment of the Missouri legislature here.

Accordingly,

IT IS HEREBY ORDERED that defendants' motion for summary judgment [#21] is granted, and that plaintiffs' motions for summary judgment [#24] and for a preliminary injunction [#5] are denied.

IT IS FURTHER ORDERED that defendant Robert P. McCullough's motions to dismiss pursuant to Fed.R. Civ.P. 21 [#19] and to join as necessary and indispensable parties all prosecutors in the state of Missouri [#20] are denied as moot.

IT IS FURTHER ORDERED that defendant Robert P. McCullough's motion to join in the various filings made by the state defendants in this case [#27] is granted.

IT IS FURTHER ORDERED that Joan Bray's motion to intervene as a defendant [#29] and Common Cause's motion for leave to participate as amicus curiae are denied as moot.

APPENDIX D

All limits are for statewide candidates unless otherwise specified. ALASKA STAT. § 15.13.070(c)(1) (Supp. 1997). ($500 per year on contributions by individuals and $1000 per year on contributions by groups other than political parties); ARIZ. REV. STAT. ANN. § 16-905 (West Supp. 1997) ($760 per election); ARK. CODE ANN. § 7-6-203(a) (Michie Supp. 1995) ($1000 per election for statewide candidates), *see also, Russell* v. *Burris*, 978 F.Supp. 1211, 1229 (E.D. Ark. 1997) (subsequently enacted lower limit found unconstitutional but severable so that $1000 limit continued to apply), aff'd in pertinent part *Russell* v. *Burris*, 146 F.3d 563 (8th Cir.), *cert. denied* 1998 WL 635679 (Nov. 16, 1998); CAL. GOV'T CODE §§ 85301(c), 85402 (West Supp. 1997) ($500 per election, increased to $1000 for candidates agreeing to expenditure limits), *see also, California Prolife Council Political Action Committee* v. *Scully*, 989 F.Supp. 1282, 1292-1300 (E.D. Cal. 1998) (limit found unconstitutional based on evidence that it would prevent candidates from amassing sufficient resources to campaign effectively); COLO. REV. STAT. ANN. § 1-45-104(2)(a) (1997) ($500 per election); CONN. GEN. STAT. §§ 9-333m(a), 9-333q(a) (1997) ($2500 per election limit on contributions to candidates for governor, $1500 per election limit on contributions to other candidates for statewide office); DEL. CODE ANN. tit. 15, § 8010(a) (1993) ($1200 per election); FLA. STAT. ANN. § 106.08 (1)(a) (West Supp. 1998) ($500 per election); GA. CODE ANN. §§ 21-5-41, 21-5-43 (Supp. 1998) (limits of $1000 per non-election year and $5000 per election year); HAW. REV. STAT. § 11-204(a)(2) (Supp. 1997) (limit of $6000 for primary and general elections combined); IDAHO CODE § 67-6610A(1) (Supp. 1998) ($5000 per election); KAN. STAT. ANN. § 25-4153(a) (1993) ($2000 per election); KY. REV. STAT. § 121.150(6) (Michie Supp. 1996) ($1000 per election); LA. REV. STAT. ANN. § 18:1505.2(H)(1)(a) (West Supp. 1998)

($500 per election); ME. REV. STAT. ANN. tit. 21-A, § 1015(1) (West Supp. 1997) ($1000 per election; beginning in 1999, $500 per election limit for gubernatorial candidates and $250 for other candidates); MD. CODE ANN., ELEC. ART. 33 § 26-9(d) (1997) ($4000 per election cycle); MASS. GEN. L. ANN. ch. 55, § 7A(a)(1) (West Supp. 1998) ($500 per calendar year); MICH. COMP. LAWS § 169.252(1)(a) (West Supp. 1998) ($3400 per election cycle); MINN. STAT. ANN. § 10A.27, subdiv. 1, (a)-(c) (West 1997) (for governor: $2000 per election year and $500 per other year; for attorney general: $1000 per election year and $200 per other year; for other statewide candidates: $500 per election year and $100 per other year); MONT. CODE ANN. § 13-37-216(1)(a)(i)-(ii) (1997) (for governor: $400 per election; for other statewide candidates: $200 per election); NEV. REV. STAT. § 294A.100 (1998) ($5000 per election cycle); N.H. REV. STAT. ANN. § 664:4V (1996) ($5000 per election); N.J. STAT. ANN. §§ 19:44A-11.3(a) and (b) and 19:44A-29(a) (West Supp. 1998) ($1500 per election for individuals; $5000 per election for political committee contributions to non-gubernatorial candidates); N.Y. ELEC. LAW § 14.114(1)(a) (McKinney 1998) (for general election: the lower of $25,000 or $.025 multiplied by the number of registered voters; for primary election: $.005 multiplied by the number of voters in the party, but no lower than $4000 and no higher than $12,000); N.C. Gen. Stat. § 163-278.13(a) (Supp. 1997) ($4000 per election); OHIO REV. CODE ANN. § 3517-.102(B)(1) and (2) (Baldwin Supp. 1998) ($2500 per election); OKLA. STAT. ANN. tit. 74, ch. 62 app. § 257:10-1-2(a)(2) (West Supp. 1998) ($5000 per campagn); OR. REV. STAT. § 260.160(1)(a) (Supp. 1998) ($500 per election), *but see Vannata* v. *Keisling*, 324 Or. 514, 931 P.2d 770 (1997) (limit found in violation of Oregon constitution); R.I. GEN. LAWS § 17-25-10.1(a)(1) (1996) ($1000 per calendar year); S.C. CODE ANN. § 8-13-1314(A)(1)(a) (Law. Co-op. Supp. 1997)

($3500 per election cycle); S.D. CODIFIED LAWS § 12-25-1.1 (Michie Supp. 1995) ($1000 per calendar year); TENN. CODE ANN. § 2-10-302(a)(1) (Supp. 1998) ($2500 per election); VT. STAT. ANN. tit. 17, § 2805 (Supp. 1998) (effective November 4, 1998, $400 per election cycle); WASH. REV. CODE ANN. § 42.17.640(1) (West Supp. 1998) ($1000 per election); W. VA. CODE § 3-8-12(f) (Supp. 1998) ($1000 per election); WIS. STAT. ANN. § 11.26(1)(a) (West Supp. 1997) ($10,000 per election); WYO. STAT. § 22-25-102(c) (1997 and Supp. 1998) ($1000 per election). Limits have also been adopted in the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. D.C. CODE ANN. § 1-1441.1(a) (Supp. 1998) (for primary and general elections combined, limits of $2000 for mayor, $1500 for council chair, $1000 for at-large council member, $500 for at-large board of education member); P.R. LAWS ANN. tit. 16, § 3105 (Supp. 1993-1994) *amended* by 1995 P.R. Laws 212 ($1000 per non-election year; $500 per primary election; $2500 per election year for governor; $1000 per election year for other offices); V.I. CODE ANN. tit. 18, § 905 (1998) ($1000 per election). Many cities also have adopted contribution limits. *See, e.g.*, Revised Municipal Code, City and County of Denver, Colorado, § 15-37(a) (following contribution limits per election cycle: $3000 for mayor, $2000 for auditor, $2000 for council member-at-large, $1000 for district council member); Code of Ordinance, City of Minneapolis, Minnesota, 167.20 (following limits on contributions in two-year period by individuals: $3000 for mayor, $1500 for comptroller-treasurer, $600 for other elected city offices); Municipal Code, City of San Jose, California §§ 12.06.320 and .330 (contribution limits per election of $250 for mayor and $100 for city council); Seattle Municipal Code 2.04.370 ($400 per election cycle limit for mayor, city council, and city attorney); City Charter, City of Tucson, Arizona, Ch. XVI, subchp. A, § 2 ($500 per campaign limit for mayor and city council).